

SENATE BILL No. 1038

March 22, 2012, Introduced by Senators PROOS, GREEN, PAVLOV, PAPPAGEORGE, JONES, ROBERTSON, NOFS, WALKER and COLBECK and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 497, entitled "Construction lien act," by amending sections 103, 104, 106, 107, 111, and 117 (MCL 570.1103, 570.1104, 570.1106, 570.1107, 570.1111, and 570.1117), sections 103 and 111 as amended by 1982 PA 17, sections 104 and 106 as amended by 2010 PA 147, section 107 as amended by 2006 PA 497, and section 117 as amended by 1981 PA 191.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 103. (1) "Actual physical improvement" means the actual
2 physical change in, or alteration of, real property as a result
3 of labor provided, ~~pursuant to~~ **UNDER** a contract, by a contractor,
4 subcontractor, or laborer ~~which~~ **THAT** is readily visible and of a
5 kind that would alert a person ~~upon~~ **ON** reasonable inspection of
6 the existence of an improvement. Actual physical improvement does

1 not include ~~that~~**THE** labor ~~which~~**THAT** is provided in preparation
 2 for ~~that~~**THE** change or alteration, such as **LAND** surveying, soil
 3 boring and testing, architectural or engineering planning, or the
 4 preparation of other plans or drawings of any kind or nature.
 5 Actual physical improvement does not include supplies delivered
 6 to or stored at the real property. **IT IS NOT NECESSARY THAT AN**
 7 **ACTUAL PHYSICAL CHANGE IN, OR ALTERATION OF, REAL PROPERTY**
 8 **INCREASE THE VALUE OF THE REAL PROPERTY TO BE AN ACTUAL PHYSICAL**
 9 **IMPROVEMENT.**

10 (2) "Co-lessee" means a person ~~having~~**WHO HAS** an interest in
 11 real property, the nature of which is identical to that of the
 12 interest of the lessee who contracted for the improvement to the
 13 real property, whether the extent of ~~such~~**THE** interest is
 14 identical or not.

15 (3) "Construction lien" means the lien of a contractor,
 16 subcontractor, supplier, or laborer, as described in section 107.

17 (4) "Contract" means a contract, of whatever nature, ~~for the~~
 18 ~~providing of improvements~~**TO PROVIDE AN IMPROVEMENT** to real
 19 property, including any and all additions to, deletions from, and
 20 amendments to the contract.

21 (5) "Contractor" means a person who, ~~pursuant to~~**UNDER** a
 22 contract with the owner or lessee of real property, provides an
 23 improvement to real property.

24 (6) "Co-owner" means a person ~~having~~**WHO HAS** an interest in
 25 real property, the nature of which is identical to that of the
 26 interest of the owner who contracted for the improvement to the
 27 real property, whether the extent of ~~such~~**THE** interest is

1 identical or not.

2 Sec. 104. (1) "Court" means the circuit court in which an
3 action to enforce a construction lien through foreclosure is
4 pending.

5 (2) "Designee" means the person named by an owner or lessee
6 to receive, on behalf of the owner or lessee, all notices or
7 other instruments required to be furnished under this act. The
8 owner or lessee may name himself or herself as designee. The
9 owner or lessee may not name the contractor as designee. However,
10 a contractor who is providing only architectural or engineering
11 services may be named as designee.

12 (3) "Fringe benefits and withholdings" means compensation
13 due an employee ~~pursuant to~~ **UNDER** a written contract or written
14 policy for holiday, time off for sickness or injury, time off for
15 personal reasons or vacation, bonuses, authorized expenses
16 incurred during the course of employment, and any other
17 contributions made to or on behalf of an employee.

18 (4) "General contractor" means a contractor who contracts
19 with an owner or lessee to provide, directly or indirectly
20 through contracts with subcontractors, suppliers, or laborers,
21 substantially all of the improvements to the property described
22 in the notice of commencement.

23 (5) "Improvement" means the result of labor or material
24 provided by a contractor, subcontractor, supplier, ~~or~~ laborer, **OR**
25 **PROFESSIONAL**, including, but not limited to, ~~surveying,~~
26 ~~engineering and architectural planning,~~ construction management,
27 clearing, demolishing, excavating, filling, **GRADING**, building,

1 erecting, constructing, altering, repairing, **REMODELING,**
 2 ornamenting, landscaping, paving, leasing equipment, ~~or~~
 3 installing or affixing a fixture or material, ~~pursuant to~~ **OR**
 4 **PROVIDING PROFESSIONAL SERVICES UNDER** a contract. **IT IS NOT**
 5 **NECESSARY THAT THE RESULT OF LABOR OR MATERIAL PROVIDED BY A**
 6 **CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR LABORER INCREASE THE**
 7 **VALUE OF THE REAL PROPERTY TO BE AN IMPROVEMENT.**

8 (6) "Laborer" means an individual who, ~~pursuant to~~ **UNDER** a
 9 contract with a contractor or subcontractor, provides an
 10 improvement to real property through the individual's personal
 11 labor.

12 Sec. 106. (1) "Person" means an individual, corporation,
 13 partnership, sole proprietorship, association, other legal
 14 entity, or any combination thereof. **OF THESE.**

15 (2) **"PROFESSIONAL SERVICES" MEANS ANY OF THE FOLLOWING:**

16 (A) **ARCHITECTURAL SERVICES, INCLUDING CONSULTATION,**
 17 **INVESTIGATION, EVALUATION, DESIGN, DRAFTING OF PLANS,**
 18 **SPECIFICATIONS, OR CONTRACT DOCUMENTS, INSPECTION AND**
 19 **SUPERVISION, TESTING, AND CONTRACT ADMINISTRATION.**

20 (B) **ENGINEERING SERVICES, INCLUDING CONSULTATION,**
 21 **INVESTIGATION, EVALUATION, DESIGN, DRAFTING OF PLANS,**
 22 **SPECIFICATIONS, OR CONTRACT DOCUMENTS, INSPECTION AND**
 23 **SUPERVISION, TESTING, AND CONTRACT ADMINISTRATION.**

24 (C) **LAND SURVEYING SERVICES, INCLUDING CONSULTATION,**
 25 **INVESTIGATION, EVALUATION, ESTABLISHMENT OR MARKING OF**
 26 **BOUNDARIES, SITE LAYOUT AND CALCULATIONS FOR AND INCLUDING**
 27 **CONSTRUCTION STAKING, AND PREPARATION OF MAPS.**

1 (D) ANY OTHER ARCHITECTURAL, ENGINEERING, INSPECTION,
2 TESTING, OR SURVEYING SERVICES RELATED TO THE IMPROVEMENT OF REAL
3 PROPERTY.

4 (3) "PROFESSIONAL" MEANS A PERSON WHO PROVIDES PROFESSIONAL
5 SERVICES TO AN OWNER, CONTRACTOR, OR SUBCONTRACTOR.

6 (4) ~~(2)~~—"Project" means the aggregate of improvements
7 contracted for by the contracting owner.

8 (5) ~~(3)~~—"Residential structure" means an individual
9 residential condominium unit or a residential building containing
10 not more than 2 residential units, the land on which it is or
11 will be located, and all appurtenances, in which the owner or
12 lessee contracting for the improvement is residing or will reside
13 upon completion of the improvement.

14 (6) ~~(4)~~—"Subcontractor" means a person, other than a laborer
15 or supplier, who ~~pursuant to~~ **UNDER** a contract between himself or
16 herself and a person other than the owner or lessee performs any
17 part of a contractor's contract for an improvement.

18 (7) ~~(5)~~—"Supplier" means a person who, ~~pursuant to~~ **UNDER** a
19 contract with a contractor or a subcontractor, leases, rents, or
20 in any other manner provides material or equipment that is used
21 in the improvement of real property.

22 (8) ~~(6)~~—"Wages" means all earnings of an employee, whether
23 determined on the basis of time, task, piece, commission, or
24 other method of calculation, for labor or services, except fringe
25 benefits and withholdings.

26 Sec. 107. (1) Each contractor, subcontractor, supplier, or
27 laborer who provides an improvement to real property **AND EACH**

1 **PROFESSIONAL THAT PROVIDES PROFESSIONAL SERVICES TO AN OWNER,**
 2 **CONTRACTOR, OR SUBCONTRACTOR** has a construction lien ~~upon~~**ON** the
 3 interest of the owner or lessee who contracted for the
 4 improvement to the real property, as described in the notice of
 5 commencement given under section 108 or 108a, the interest of an
 6 owner who has subordinated his or her interest to the mortgage
 7 for the improvement of the real property, and the interest of an
 8 owner who has required the improvement. A construction lien
 9 acquired ~~pursuant to~~**UNDER** this act shall not exceed the amount
 10 of the lien claimant's contract less payments made on the
 11 contract. **FOR A CONSTRUCTION LIEN TO ATTACH UNDER THIS ACT,**
 12 **INCLUDING, BUT NOT LIMITED TO, A LIEN RESULTING FROM LAND**
 13 **SURVEYING, ENGINEERING, OR ARCHITECTURAL PLANNING, OR**
 14 **CONSTRUCTION MANAGEMENT, UNDER A CONTRACT, IT IS NOT NECESSARY**
 15 **FOR AN ACTUAL PHYSICAL IMPROVEMENT TO HAVE OCCURRED OR BE**
 16 **COMMENCED ON THE REAL PROPERTY. A LIEN FILED BEFORE THE RECORDING**
 17 **OF A NOTICE OF COMMENCEMENT UNDER SECTION 108 IS SUBJECT TO THE**
 18 **PRIORITY PROVISIONS OF SECTION 119.**

19 (2) A construction lien under this act attaches to the
 20 entire interest of the owner or lessee who contracted for the
 21 improvement, including any subsequently acquired legal or
 22 equitable interest.

23 (3) Each contractor, subcontractor, supplier, ~~ex~~**laborer, OR**
 24 **PROFESSIONAL** who provides an improvement to real property to
 25 which the person contracting for the improvement had no legal
 26 title has a construction lien ~~upon~~**ON** the improvement for which
 27 the contractor, subcontractor, supplier, ~~ex~~**laborer, OR**

1 **PROFESSIONAL** provided labor, material, ~~or~~ equipment, **OR**
2 **PROFESSIONAL SERVICES**. The forfeiture, surrender, or termination
3 of any title or interest held by an owner or lessee who
4 contracted for an improvement to the property, an owner who
5 subordinated his or her interest to the mortgage for the
6 improvement, or an owner who has required the improvement does
7 not defeat the lien of the contractor, subcontractor, supplier,
8 or laborer ~~upon~~ **ON** the improvement.

9 (4) If the rights of a person contracting for an improvement
10 as a land contract vendee or a lessee are forfeited, surrendered,
11 or otherwise terminated, any lien claimant who has provided a
12 notice of furnishing or is excused from providing a notice of
13 furnishing under section 108, 108a, or 109 and who performs the
14 covenants contained in the land contract or lease within 30 days
15 after receiving actual notice of the forfeiture, surrender, or
16 termination is subrogated to the rights of the contracting vendee
17 or lessee as those rights existed immediately before the
18 forfeiture, surrender, or termination.

19 (5) For purposes of this act, if the real property is owned
20 or leased by more than 1 person, there is a rebuttable
21 presumption that an improvement to real property under a contract
22 with an owner or lessee was consented to by any other co-owner or
23 co-lessee. If enforcement of a construction lien through
24 foreclosure is sought and the court finds that the improvement
25 was consented to by a co-owner or co-lessee who did not contract
26 for the improvement, the court shall order the entire interest of
27 that co-owner or co-lessee, including any subsequently acquired

1 legal or equitable interest, to be subject to the construction
 2 lien. ~~A~~ **THE COURT SHALL NOT ENTER A** deficiency judgment ~~shall not~~
 3 ~~be entered~~ against a noncontracting owner, co-owner, lessee, or
 4 co-lessee.

5 (6) If the real property of an owner or lessee is subject to
 6 multiple construction liens, the sum of the construction liens
 7 shall not exceed the amount the owner or lessee agreed to pay the
 8 person with whom he or she contracted for the improvement as
 9 modified by all additions, deletions, and other amendments, less
 10 payments made by or on behalf of the owner or lessee, pursuant to
 11 either a contractor's sworn statement or a waiver of lien, in
 12 accordance with this act.

13 (7) After ~~the effective date of the amendatory act that~~
 14 ~~added this subsection~~ **JANUARY 3, 2007**, a construction lien of a
 15 subcontractor or supplier for an improvement to a residential
 16 structure shall only include an amount for interest, including,
 17 but not limited to, a time-price differential or a finance
 18 charge, if the amount is in accordance with the terms of the
 19 contract between the subcontractor or supplier and the contractor
 20 or subcontractor and does not include any interest that accrues
 21 after 90 days after the claim of lien is recorded.

22 Sec. 111. (1) Notwithstanding section 109, the right of a
 23 contractor, subcontractor, laborer, ~~or~~ supplier, **OR PROFESSIONAL**
 24 to a construction lien created by this act ~~shall cease~~ **CEASES** to
 25 exist unless, within ~~90~~ **120** days after the lien claimant's last
 26 furnishing of labor or material for the improvement, ~~pursuant to~~
 27 **UNDER** the lien claimant's contract, a claim of lien is recorded

1 in the office of the register of deeds for each county where the
2 real property to which the improvement was made is located. A
3 claim of lien ~~shall be~~ **IS** valid only as to the real property
4 described in the claim of lien and located within the county
5 where the claim of lien has been recorded.

6 (2) A claim of lien shall be in substantially the following
7 form:

8 **CLAIM OF LIEN**

9 Notice is ~~hereby~~ given that on the day of
10 , ~~19-20~~..... ,
11 (name)
12
13 (address)

14 first provided labor or material for an improvement to.....
15 ,
16 (legal description of real property from notice of commencement)
17 the (owner) (lessee) of which property is
18
19 (name of owner or lessee from notice of commencement)

20 The last day of providing the labor or material was the
21 day of , ~~19-20~~..... .

22 **TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A CONTRACTOR,**
23 **SUBCONTRACTOR, ~~OR~~ SUPPLIER, OR PROFESSIONAL:**

24 The lien claimant's contract amount, including extras, is
25 \$ The lien claimant has received
26 payment ~~thereon~~ **ON THE CONTRACT** in the total amount of
27 \$, and therefor claims
28 a construction lien ~~upon~~ **ON** the ~~above-described~~
29 real property in the amount of \$

30 **TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A LABORER:**

31 The lien claimant's hourly rate, including fringe benefits

1 and withholdings, is \$

2 There is due and owing to or on behalf of the laborer ~~the~~
3 ~~sum of~~ \$ for which the laborer claims
4 a construction lien ~~upon~~ **ON** the ~~above described~~ real property.

5
6 (lien claimant)

7 by.....
8 (signature of lien claimant, agent, or attorney)

9
10 (address of party signing claim of lien)

11 Date:

12 State of Michigan)

13) ss.

14 County of

15 Subscribed and sworn to before me ~~this~~

16 ~~day of~~ **ON**, ~~19~~ **20**.....

17
18 Signature of Notary Public

19 My commission expires:

20 Prepared by:
21 (name and address of party)

22 (3) If ~~the claim of~~ **A** lien **UNDER THIS ACT** has been assigned,
23 the claim of lien shall state: "The construction lien having been
24 assigned, this claim of lien is made by as assignee".
25 ~~thereof~~".

26 (4) A claim of lien by a subcontractor, supplier, or laborer
27 shall have attached to it a proof of service of a notice of
28 furnishing described in section 109.

29 (5) Each contractor, subcontractor, supplier, laborer, or
30 agent of a group of laborers authorized under subsection (6)
31 recording a claim of lien, within 15 days after the date of the

1 recording, shall serve on the designee personally or by certified
2 mail, return receipt requested, at the address shown on the
3 notice of commencement, a copy of the claim of lien and a copy of
4 any proof of service recorded in connection with the claim of
5 lien. If a designee has not been named in the notice of
6 commencement, or if the designee has died, service shall be made
7 ~~upon~~ **ON** the owner or lessee named in the notice of commencement.
8 If the service is made by certified mail, service is complete
9 ~~upon~~ **ON** mailing. Proof of making the service shall be attached to
10 any complaint, cross-claim, or counterclaim filed to enforce a
11 construction lien.

12 (6) One or more laborers may authorize an agent to prepare,
13 record, and serve a claim of lien in the manner provided in this
14 section. A claim of lien under this section may contain the claim
15 of lien of more than 1 laborer and shall contain the information
16 required in subsection (2) as to each laborer for whom it is
17 prepared. The claim of lien of each lien claimant under this
18 subsection shall be considered by the court on its own merits.

19 Sec. 117. (1) ~~Proceedings for the enforcement of~~ **AN ACTION**
20 **TO ENFORCE** a construction lien and ~~the foreclosure of~~ **FORECLOSE**
21 any interests subject to the construction lien shall not be
22 brought later than ~~1 year~~ **2 YEARS** after the date the claim of
23 lien was recorded.

24 (2) At the time of commencing an action for the enforcement
25 of a construction lien through foreclosure, the plaintiff shall
26 record a notice ~~of~~ **lis pendens** with respect to the action in the
27 office of the register of deeds for the county in which the real

1 property involved in the action is located.

2 (3) As provided in section 111(6), an action to foreclose ~~on~~
3 a construction lien may be maintained by an agent appointed to
4 represent laborers.

5 (4) Each person who, at the time of filing ~~the~~~~AN~~ action ~~TO~~
6 **FORECLOSE A CONSTRUCTION LIEN**, has an interest in the real
7 property involved in the action ~~which~~~~THAT~~ would be divested or
8 otherwise impaired by the foreclosure of the lien, shall be made
9 a party to the action.

10 (5) In connection with an action ~~for foreclosure of~~~~TO~~
11 **FORECLOSE** a construction lien, the lien claimant also may
12 maintain an action on any contract from which the lien arose.

13 (6) Except as otherwise provided in subsection (1), a lien
14 claimant who has been made a party to an action ~~for foreclosure~~
15 ~~of~~~~TO~~ **FORECLOSE** a construction lien may enforce his or her own
16 construction lien in the action by a cross-claim or counterclaim,
17 and the owner or lessee may timely join other or potential lien
18 claimants in the action.

19 (7) In an action brought by a contractor or subcontractor to
20 enforce a construction lien through foreclosure, the complaint,
21 cross-claim, or counterclaim must show that the owner or lessee
22 was provided a sworn statement, if a sworn statement was
23 requested or required, ~~pursuant to~~~~UNDER~~ section 110.